

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES

vs.

Criminal No. 04-30032-MAP

FRANK KEOUGH, et al.,
Defendants

**DEFENDANT'S MOTION FOR ORDER COMPELLING
GOVERNMENT TO SPECIFY EVIDENCE
THE GOVERNMENT INTENDS TO USE AT TRIAL**

Now comes the Defendant, Francis Keough, in the above-captioned matter, and moves this Honorable Court, pursuant to Rule 12(d)(2) of the Federal Rules of Criminal Procedure, for an order requiring the Government to specify the evidence the Government intends to use at trial.

As grounds therefor, the Defendant states that:

1. Rule 12(d)(2) provide that at the Defendant's request, the Government is required to specify which evidence it intends to use at trial. United States v. de la Cruz-Paulino, 61 F.3d 986 (1st Cir. 1995).
2. The Defendant has made said request, but the Government has refused to make any specification in violation of Rule 12(d)(2).
3. An "open file" policy by the Government is as a matter of law inadequate to meet the Government's obligation under Rule 12(d)(2). United States v. de la Cruz-Paulino, 61 F.3d 986 (1st Cir. 1995); and
4. As a result of the Government's refusal to specify the evidence it intends to use at trial, the Defendant's ability to prepare and submit Motions to Suppress has been frustrated.

In further support thereof, the Defendant relies on his Memorandum of Law in Support of

Defendant's Motion for Discovery in Conformity with Discovery Request Letter, filed herewith.

WHEREFORE, by all of the above, Defendant's Motion for Order Compelling Government to Specify Evidence the Government Intends to Use at Trial, must be allowed.

THE DEFENDANT,
FRANK KEOUGH

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CERTIFICATE OF SERVICE

I, Dan Kelly, Esq., hereby certify that I caused the foregoing document to be served upon the United States Attorney's Office at 1500 Main Street, Springfield, MA, by electronic service this 27th day of September, 2006.

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